S.B.CIVIL WRIT PETITION NO.3274/2007

Dalchand Menaria
v.
State of Rajasthan & Ors.

Date of Order :: 4th October, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.K.Purohit, for the petitioner.
Mr. B.L.Tiwari, Deputy Government Advocate.

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The Regional Transport Authority, Udaipur by an order dated 10.11.2004 renewed non-temporary stage carriage permit in favour of the petitioner for the route City Station Udaipur to Kailashpuri via Udaipol, Surajpol, Delhigate, Hathipol, Chetak Circle, Fatehpura Chauraha, Pula, Bhuwana, Sukhor etc. with a peremptory condition to obtain endorsement of the renewal within a period of 60 days from the date of the order i.e. 10.11.2004. According to the petitioner the order dated 10.11.2004 was neither passed in his presence nor was communicated to him, thus, he failed to obtain endorsement of renewal within the period prescribed and on knowing about the order of renewal on 17.11.2005, an application was filed seeking endorsement, however, the Regional Transport Authority, Udaipur rejected the same on 21.11.2005 being permit stood cancelled for non-compliance of the precondition. An appeal was preferred by the

petitioner before the State Transport Appellate Tribunal, Jaipur to assail validity, propriety and correctness of the order dated 21.11.2005 but the Tribunal is not having posted with its judicial member from about a year, therefore, this petition for writ is preferred claiming the reliefs as follows:-

> "by an appropriate writ, order or direction the order dated 21.11.2005 passed by the Regional Transport Authority, Udaipur (Annexure 4) may very kindly be quashed; (ii)that by an appropriate writ, order or direction the application dated 17.11.2005 filed by the petitioner for making the endorsement of renewal of permit in the permit may very kindly be allowed and (iii) by an appropriate writ, order or direction the Regional Transport Authority, Udaipur may very kindly be directed to make the endorsement of renewal of permit for further five years in the permit of the petitioner."

The contention of counsel for the petitioner is that the resolution granting permit to the petitioner had neither been communicated nor was it within the knowledge of the petitioner upto 17.11.2005, as such the petitioner was not at all in

position to obtain endorsement within the period prescribed. It is urged that as per rule 5.9 of the Rajasthan Motor Vehicles Rules, 1990 (hereinafter referred to as “the Rules of 1990”) the Secretary/Executive Officer of the Regional Transport Authority is under an obligation to intimate the applicant within seven days from the date of the order of the Regional Transport Authority regarding grant or rejection of the application and in the instant matter no intimation was given to the petitioner, therefore, he was not aware about renewal with condition for obtaining endorsement on permit.

It is asserted that the compliance of the provisions of rule 5.9 of the Rules of 1990 is mandatory and in absence of the compliance of the provision aforesaid the resolution undertaken and order of renewal was ineffective and, therefore, there was no question of its cancellation. To substantiate the contention, counsel for the petitioner has placed reliance upon a judgment of this Court in the case of Rajasthan State Road Transport Corporation v. State Transport Appellate Tribunal and others, reported in 1999(1) WLC (Raj.) 619, holding therein that “the provisions of rule 5.9 of the Rules are mandatory for the reason that non-compliance of the conditions mentioned in the Resolution while granting the permit, if not communicated, would cause serious prejudice to the grantee as he would not be able to lift the permit

in stipulated period nor he would be able to go in appeal under the provisions of Section 89 of the Act, if he feels aggrieved by the resolution/order. Moreover, unless the order is communicated to the other side, the author of the order would be able to change the context of the order or the entire order. Thus, it is beyond imagination that an order can be held to be effective without being communicated. The provisions of the said rule contemplate a positive action on the part of the R.T.A. and unless that obligation is fulfilled by the Authority, such an order cannot be given effect to."

In the present matter it is position admitted that no intimation was given to the petitioner as per provisions of rule 5.9 of the Rules of 1990, as such in light of the judgment of this Court in the case of Rajasthan State Road Transport Corporation (supra) the order granting permit to the petitioner could not be held to be effective and, therefore, the same was erroneously treated cancelled by the respondent under the order impugned.

Accordingly, this petition for writ deserves acceptance, hence, is allowed. The order impugned dated 21.11.2005 treating the petitioner's permit cancelled for the route City Station Udaipur to Kailashpuri is declared illegal. The order dated 10.11.2004 is restored. The authority competent is

directed to endorse the permit if the petitioner present the same before it within a period of 60 days from today.

No order to costs.

(GOVIND MATHUR),J.

Kkm/ps.